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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,793	09/19/2003	Edward J. Kaplan	KAP 100 CIP	6738

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EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,793

Applicant(s)

KAPLAN, EDWARD J.

Examiner

Jagadishwar R. Samala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 34 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim (34) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specifications describe that brachytherapy strand or seed comprising elastic but not the spacers are elastic in the strand.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 16 is drawn to a brachytherapy strand comprising of seeds. This claim is confusing, because claim 1 already states, what is claimed is a strand or a seed.

Claim 21 is rejected under 35 U.S.C 112, second paragraph, as being improperly referring to post claim.

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1,3, 5 -14,16-21 and 24-34 rejected under 35 U.S.C. 102(b) as being anticipated by Slater (Slater et al, US 6,200,258).

Slater (258) discloses a method of design and enclosure of radioactive therapeutic seeds in biocompatible carrier, see column 1, lines 20-34. Slater (258) further discloses that the radioactive therapeutic seeds bearing a radioactive isotope and a radiopaque marker are provided with transverse bore accessible from the exterior of the seed for filling the cavities or pores with therapeutic or diagnostic agents, see column 3, lines 25-28. Slater (258) also discloses therapeutic metal seed enclosed in a cylindrical capsule made of low atomic number biocompatible materials. Slater (258) also teaches that a radiopaque marker is enclosed inside the seed for tracing with x-ray or by fluoroscopic examination, see column 1, lines 49-52, 64-66 and column 2, lines 4-8.

Claims 1, 2,4 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Widder. (Widder et al, US 4,247,406). Widder (406) discloses biodegradable carrier comprising micro spheres formed from an natural amino acids (proteins) and synthetic amino acids polymers matrix and also water soluble proteins such as hemoglobin used for administering a wide variety of therapeutic or diagnostic agents, see column 2, lines 22-29. This disclosures render the claims anticipated.

Claims 1,3, 22 and 23 rejected under 35 U.S.C. 102(b) as being anticipated by Glajch (Glajch et al, PG.Pub. US 2002/0114763). Glajch (763) discloses a radio therapeutic agent as solid or porous inorganic material having a suitable radionuclide. The inorganic material includes mixtures of monomeric and

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polymeric forms thereof, see page 1 (0001). Glajch (763) also describes that the radio therapeutic agent comprising a pharmaceutically acceptable biocompatible carrier, to treat a tissue or organ system of patient, see page 2. 9(0033)

Claims 1, 3, 22, 23, 27-29 and 31 rejected under 35 U.S.C. 102(b) as being anticipated by Yli – Urpo et al (US 5,762,950). Yli-Urpo (950) discloses a method of preparing a bioceramic system for delivery of a bioactive compound comprising of hydroxyapatite, bioactive ceramic and thereof, see column 1, lines 51-54.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goffinet (US,4,763,671) discloses a method of treating a massive adenoid cystic tumor on the base of tongue, see column 6, lines 47-68 and column 7, lines 1-5, but is cumulative to the reference cited herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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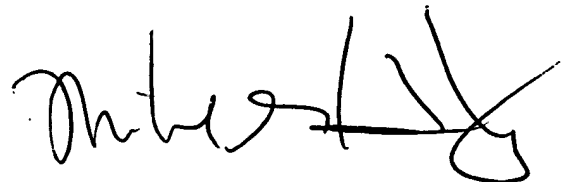
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jagadishwar R. Samala

Examiner

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sjr



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER